(3)

No. 01-1555

Supreme Court, U.S.
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In The

Supreme Court of the United States

KATHY W. FENTROY,

Petitioner,

v.

DILLARD TEXAS OPERATING LIMITED PARTNERSHIP,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

REPLY BRIEF

ERMA J. CAREY-BAY
Counsel of Record
3648 FM 1960 West
Suite 103
Houston, Texas 77068
(713) 521-2137

Attorney for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED

1. Are racial comments directed towards a plaintiff required under Title VII to establish a claim of hostile work environment when there is sufficient evidence of racially disparate treatment in terms and conditions of employment, such as promotion, compensation, demotion and other general racial differences in treatment in the workplace?

2. Can sufficient evidence of racially disparate treatment in terms and conditions of employment, such as promotion, compensation, demotion, and general racial difference in treatment in the workplace, be used to support a claim of hostile or abusive work environment racial harassment?

3. Has the plaintiff established a claim of a racially hostile and discriminatory work environment when she presents sufficient evidence that she was persistently subjected to a work environment in which she was harassed and discriminated against because of her race, in that less qualified white employees were given promotions, larger raises, more desirable work assignments, similarly situated white employees were returned to their regular positions after their leave of absence terminated, while plaintiff was assigned to an inferior position and that she was criticized more harshly than similarly situated white employees?

4. When the Circuit Court reversed the trial judge's order denying the employer's motion for judgment as a matter of law and amended judgment, awarding

QUESTIONS PRESENTED – Continued

compensatory damages and rendered judgment as a matter of law for the employer, did the Circuit Court commit reversible error?

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REPLY TO COUNTERSTATEMENT OF CASE

In reply to points raised by Respondent, and to clarify the facts, Petitioner's pleadings and proof at trial set forth and established that Ms. Fentroy was subjected to a discriminatorily hostile and abusive work environment. Some of the evidence presented to the jury included testimonial and documentary evidence establishing that Ms. Fentroy was persistently passed over for promotions with the positions being given to less qualified white area sales managers ("ASM's").[1] Further, the jury heard evidence that Ms. Fentroy received less in pay raises over a period of time than her non-African American counterparts. In short, Ms. Fentroy was prevented, by discriminatory conduct, from advancing in her career and from remaining on the job. *See Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993).

Contrary to Respondent's assertions, the factual allegations of Fentroy's original complaint included specifically and generally, the hostile work environment claim. Fentroy complained generally throughout her complaint that her work environment was permeated with discrimination. Specifically set forth in paragraphs thirty-one, and fifty-one are the following:

> 31. Fentroy was physically weakened by the constant racial harassment. She began

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[1] For instance, the jury received evidence that white ASM's Janet Wilson and Scott Smith and Dawn Allred, among others were promoted to operations manager after Ms. Fentroy had informed Respondent of her interest in career advancement. [Tr. 2:47-52] Whereas, Ms. Fentroy was moved laterally into another ASM position at the Woodlands store and told that it was a promotion.

> medical treatment because of the hostile work environment
>
> 51. Fentroy was forced out of her job by conduct that was so abusive that the work environment became intimidating, offensive, hostile and intolerable. [ROA 10 and 6].

Discovery was conducted in accordance with the contentions raised by the parties in their respective pleadings and not solely on the disparate treatment complained of in the pleadings.

Although Respondent recites what he describes as Petitioner's misstatements and misunderstandings of the case, the case set forth by Petitioner is supported by the record, included the attached appendix. From the trial record, Ms. Fentroy was the only African-American ASM while she worked at the Gulfgate store. She was the only African-American ASM at the Woodland's store for the first nine 'months of the discriminatory treatment and harassment and approximately one (1) month and a few days before she suffered a nervous breakdown which necessitated a medical leave of absence.

REASONS FOR GRANTING WRIT

The Court of Appeals erred in its decision that Respondent was entitled to judgment as a matter of law.

Respondent asserts that the Court of Appeals simply found insufficient evidence to support a racially hostile work environment claim. However, Ms. Fentroy contends that there was sufficient evidence, when viewed in its totality, for the jury to conclude that Respondent had discriminated against Ms. Fentroy on account of her race

by subjecting her to a hostile work environment. The Court of Appeals, however, misapplied the standard of review of Rule 50 by failing to draw all reasonable inferences in favor of Ms. Fentroy and it disregarded the evidence in support of Ms. Fentroy's *prima facie* case. Fed. Rule Civ. Proc. 50(a). Specifically, the Court of Appeals disregarded evidence that Ms. Fentroy was subjected to a racially discriminatory intimidation, ridicule or insult. The Court of Appeals disregarded evidence or racial harassment. The race-related comments, made by Respondent's managers Williams and Olejniczak were discounted by the Court of Appeals as not remarks about Fentroy's race; even though the remarks and discriminatory actions concerned African-Americans. Ms. Fentroy is African-American. Also, the disparate treatment was further evidence of race animus. The Court of Appeals erred in substituting its judgment regarding the weight of evidence, which is a function for the jury. See *Reeves v. Sanderson Plumbing Products Inc.*, 530 U.S. 120, 133 S. Ct. 2097, 147 L. Ed. 2d 105 (2000).

Respondent cited *Johnson v. City of Fort Wayne, Indiana*, 91 F.3d 922 (7th Cir. 1996) in support of its contention that "incidents of alleged disparate treatment cannot be characterized as rising to the level of a racially hostile work environment." However, the *Johnson* court recognized the principle that discrimination based on race can create a hostile work environment when instances of disparate treatment are not viewed in isolation but in the aggregate. In *Johnson,* the court reasoned:

> Viewing each of the enumerated instances of mistreatment in isolation, we may read this complaint to allege that he was singled out for less favorable treatment on account of his race. **We may also view these instances in the**

> **aggregate and read Mr. Johnson's complaint as asserting that the sum of the defendant's discriminatory conduct created a racially hostile work environment.** Title VII encompasses both types of claims; its proscriptions are violated either if Mr. Johnson is able to demonstrate that he was treated less favorably than other employees on the basis of his race, see *International Bhd. of Teamsters*, 431 U.S. at 335 n. 11, or if discrimination based upon Mr. Johnson's race created a hostile work environment, e.g., *Daniels v. Essex Group, Inc.*, 937 F.2d 1264, 1270 (7th Cir. 1991). Accordingly, we evaluated Mr. Johnson's allegations under each of these theories of recovery.

The Seventh Circuit examined six separate instances of racial discrimination: (1) directive that Mr. Johnson be excluded from certain policy meetings of the Fire Department; (2) Mr. Johnson's arrest at a tavern that had nothing to do with his employer; (3) the Department's refusal to permit him to use a Department vehicle while he was on vacation and to provide him with vacation pay at the Assistant Chief grade; (4) Chief Hinton's order that Mr. Johnson stay away from fire stations and fire scenes while on sick leave; (5) Chief Hinton's repeated orders that Mr. Johnson be evaluated by the city doctor; and (6) his demotion to his prior rank of Lieutenant. After analyzing the instances of alleged discrimination in isolation, the Seventh Circuit granted summary judgment on most of these contentions. Then the court analyzed the same contentions (disparate treatment in the aggregate) under the hostile work environment-racial harassment theory and found on those particular facts that the conduct did not rise to the level of a hostile work environment.

In sharp contrast to the foregoing, Ms. Fentroy's evidence to the jury showed that she was persistently subjected to discrimination and harassment, which prevented her from advancing in her career and remaining on the job. The Fifth Circuit would not examine the contentions in the aggregate as had the district judge and the jury. Instead, the Fifth Circuit reviewed the disparate treatment evidence in isolation in rendering its decision that the disparate treatment may support a disparate treatment claim, but disparate treatment did not support the hostile work environment claim.

In weighing all of the evidence, and observing the demeanor of the witnesses the jury essentially answered, under the instructions of the parties (Appendix), that discrimination based on race, in terms and conditions of employment, such as promotion decisions, compensation decisions, job assignment upon return from leave of absence decisions, and numerous other acts of discriminatory treatment, i.e., disparate treatment, rose to the level of a hostile and abusive work environment.[2] The Court of Appeals erred.

CONCLUSION

In sum, this court should grant this Petition for Writ of Certiorari on this important federal question and to clarify the intent of Congress in enacting Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e,

[2] The Respondent set forth a portion of the agreed upon jury instructions. (Brief in Opposition, Page 8). The Petitioner included the complete special instructions and interrogatories in the Appendix.

et seq. As agreed to in *Meritor,* and as apparently rejected by the Court of Appeals, a violation of Title VII may be established by proving that discrimination based on race has created a hostile work environment.

> "[T]he phrase 'terms, conditions or privileges of employment' in [Title VII] is an expansive concept which sweeps within its protective ambit the practice of creating a working environment heavily charged with ethnic or racial discrimination. . . . " *Meritor Savings Bank FSB v. Vinson*, 477 U.S. 57, 106 S. Ct. 2399, 91 L. Ed. 2d 49 (1986) citing *Rogers v. EEOC,* 454 F.2d 234, 238 (5th Cir. 1971).

Respectfully submitted,

ERMA J. CAREY-BAY
Attorney of Record
3648 FM 1960 West, Suite 103
Houston, Texas 77068
(713) 521-2137

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KATHY W. FENTROY Plaintiff, v. DILLARD TEXAS OPERATING LIMITED PARTNERSHIP Defendant.	§ § § § § § § § §	C.A. No. 97-3213 (Filed Oct. 19, 1999)

SPECIAL INSTRUCTIONS AND INTERROGATORIES

GENERAL INSTRUCTIONS

Members of the Jury:

You have heard the evidence in this case. I will now instruct you on the law that you must apply. It is your duty to follow the law as I give it to you. On the other hand, you the jury are the judges of the facts. Do not consider any statement that I have made in the course of trial or make in these instructions as an indication that I have any opinion about the facts of this case.

You will shortly hear the closing arguments of the attorneys. Statements and arguments of the attorneys are not evidence and are not instructions on the law. They are intended only to assist the jury in understanding the evidence and the parties' contentions.

Answer each question from the facts as you find them. Do not decide who you think should win and then

answer the questions accordingly. Your answer to each question must be unanimous.

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice.

You must answer all questions from a preponderance of the evidence. By this is meant the greater weight and degree of credible evidence before you. In other words, a preponderance of the evidence just means the amount of evidence that persuades you that a fact is more likely than not so. In determining whether any fact has been proved by a preponderance of the evidence in the case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called the witness, and all exhibits received in evidence, regardless of who may have introduced the exhibit.

In determining the weight to give to the testimony of a witness, you should ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact, or whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was

different from the testimony the witness gave before you during the trial. You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people may forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether that misstatement was an intentional falsehood or simply an innocent lapse of memory; and the significance of that may depend on whether it has to do with an important fact or with only an unimportant detail.

A witness may be discredited or "impeached" by contradictory evidence, by showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witnesses' present testimony. If you believe that any witness has been impeached, then you have the right to give the testimony of that witness the credibility or weight, if any, that you think it deserves.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as is a private individual. The law is no respecter of persons, and all persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.

When a corporation is involved, of course, it may act only through natural persons as its agents or employees; and, in general, any agent or employee of a corporation

may bind a corporation by his or her acts and declarations made while acting within the scope of his or her authority and delegated to him or her by the corporation, or within the scope of his or her duties as an employee of the corporation.

While you should consider only the evidence in this case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case. The testimony of a single witness may be sufficient to prove any fact, even if a greater number of witnesses may have testified to the contrary, if after considering all the other evidence you believe that single witness.

When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field – he is called an expert witness – is permitted to state his opinion on those technical matters. However, you are not required to accept that opinion. As with any other witness, it is up to you to decide whether to rely upon it.

In deciding whether to accept or rely upon the opinion of an expert witness, you may consider any bias of the witness, including any bias you may infer from the evidence that the expert witness has been or will be paid for reviewing the case and testifying, or from evidence that he testifies regularly as an expert witness and his income form [sic] such testimony represents a significant portion of his income.

There are two types of evidence that you may consider in properly finding the truth as to the facts in this case. One is direct evidence – such as testimony of an eyewitness. The other is indirect or circumstantial evidence – the proof of a chain of circumstances that indicates the existence or nonexistence of certain other facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that you find the facts from a preponderance of all the evidence, both direct and circumstantial.

You will recall that during the course of this trial I instructed you that I admitted certain testimony for a limited purpose. You may consider such evidence only for the specific limited purpose for which it was admitted.

Any notes that you have taken during this trial are only aids to memory. If your memory should differ from your notes, then you should rely on your memory and not on the notes. The notes are not evidence. A juror who has not taken notes should rely on his or her independent recollection of the evidence and should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollection or impression of each juror about the testimony.

In order for Plaintiff to establish an actionable claim of racial harassment under Title VII she must demonstrate the following:

1. That she belongs to a protected class;
2. That she was subject to unwelcome racial harassment;
3. That the harassment was based on race;

4. That the harassment affected a "term, condition, or privilege of employment;" and

5. That the employer either knew or should have known of the harassment and failed to take prompt remedial action.

To further establish that the harassment rose to the level of a hostile work environment, Plaintiff must additionally show:

1. racially discriminatory intimidation, ridicule, and insults, which are;

2. sufficiently severe or pervasive that they;

3. altered the conditions of her employment; and

4. created an abusive working environment.

In order for conduct to be sufficiently severe or pervasive to create an abusive working environment, it must create an environment that a reasonable person would find hostile or abusive and that the victim herself perceived to be hostile or abusive. In making this determination, you should look to factors such as the frequency of the conduct, its severity, the degree to which it is physically threatening or humiliating, and the degree to which it unreasonably interferes with an employee's work performance. No single factor is required.

Not all work place harassment affects a term, condition or privilege of employment within the meaning of Title VII. To establish that harassment was so severe and pervasive that it altered the conditions of employment and constituted an abusive working environment, Plaintiff must prove more than a few isolated incidents

of racial enmity. It is not enough for Plaintiff to simply show that she was treated badly and that she is black. The mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee does not effect [sic] the conditions of employment to a sufficiently significant degree to violate Title VII. Similarly, even racial comments that are sporadic or part of casual conversation do not violate Title VII.

In order to establish that her allegations of failure to promote, unequal compensation, and demotion created a hostile work environment, Plaintiff must show that those employment actions were motivated by her race. She can do this either by direct evidence or by an indirect or inferential method of proof. When a plaintiff attempts to prove that actions were motivated by her race through an indirect or inferential method of proof:

- Plaintiff has the burden of proving by a preponderance of the evidence a *prima facie* case of discrimination.
- If the plaintiff succeeds in proving a *prima facie* case, the defendant must articulate a legitimate, non-discriminatory reason for its actions.
- If the defendant can articulate a non-discriminatory reason for its actions, then the plaintiff must prove that the defendant's articulated reasons are not the true reasons, but are a pretext for discrimination.

In order to establish a *prima facie* case involving denial of promotion, Plaintiff must show:

1. That she is a member of a protected group;
2. That she applied for a position for which she was qualified;
3. That she was rejected; and
4. That after she was rejected, Dillard's promoted or continued to seek a person who was not a member of the protected group for the job.

Further, when a plaintiff relies on the relative qualifications between herself and other employees in an effort to prove unlawful discrimination, she must show that she was "clearly better qualified" than the other employees with whom she compares herself.

In order to establish a *prima facie* case of discrimination regarding compensation, Plaintiff must prove:

1. That she is a member of a protected class; and
2. That she was compensated less than a non-member of the protected class for work requiring substantially the same responsibility.

In order to establish a *prima facie* case of discriminatory demotion, Plaintiff must show that:

1. She was demoted;
2. She was qualified for the position she occupied;
3. She was within a protected class at the time of demotion; and
4. Either:

(i) the position she occupied was filled by someone outside the protected class; or

(ii) she was otherwise demoted because of a protected factor.

In order to establish that Defendant's articulated reasons for its actions are a pretext for discrimination, Plaintiff must show:

1. That Dillard's stated reasons were not what actually motivated it; and

2. That race was a determinative factor in the actions of which Plaintiff complains.

When making your decisions, you are not to decide whether you, as an employer, would have treated plaintiff differently under the same circumstances. You are not here to judge whether defendant's decisions were right or wrong from a business or educational standpoint.

Stray remarks in the workplace do not constitute evidence of discrimination. This means that statements made by persons not involved in the decisions pertaining to Plaintiff and statements made by decision makers that are unrelated to those decisions should not be considered by you in deciding whether Dillard's discriminated against Plaintiff on the basis of her race by maintaining a racially hostile working environment.

Assertions of subjective belief do not constitute facts. Therefore, the subjective belief of Plaintiff (or any other witness) that she has been discriminated against does not constitute evidence of discrimination.

Question No. 1:

> Do you find from a preponderance of the evidence that Dillard Texas Operating Limited Partnership subjected Ms. Fentroy to a hostile or abusive work environment on account of her race?

Answer "We do" or "We do not."

ANSWER: We do

If you answer to Question No. 1 is "We do," go to Question No. 2.

Question No. 2 addresses the award of damages. If the plaintiff has proven her claim against the defendant by a preponderance of the evidence, you must determine the damages to which the plaintiff is entitled. You should not interpret the fact that I have given instructions about the plaintiff's damages as an indication in any way that I believe that the plaintiff should, or should not, win this case. It is your task first to decide whether the defendant is liable. I am instructing you on damages only so that you will have guidance in the event you decide that the defendant is liable and that the plaintiff is entitled to recover money from the defendant. If you find that the defendant is liable to the plaintiff, then you must determine an amount that is fair compensation for all of the plaintiff's damages. You may award compensatory damages only for the injuries that the plaintiff proves were proximately caused by the defendant's allegedly wrongful conduct.

The damages that you award must be fair compensation for all of the plaintiff's damages, no more and no less. Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendant. You should not award compensatory damages for

speculative injuries, but only for those injuries which the plaintiff has showed she actually suffered or that the plaintiff is reasonably likely to suffer in the future. If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let the difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that the plaintiff prove the amount of her losses with mathematical precision, but only with as must definiteness and accuracy as the circumstances permit. You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.

You should consider the following elements of damage, to the extent you find them proved by a preponderance of the evidence:

1. Loss of income from denied raises and/or promotion up to the time of resignation

2. Past and future mental anguish

The term "mental anguish" means relatively high degree of mental pain and distress. It is more than mere disappointment, anger, resentment, or embarrassment, although it may include all of these. It includes a mental sensation of pain resulting from such painful emotions as grief, severe disappointment, indignation, wounded pride, shame, despair, and/or public humiliation. You must determine the amount of mental anguish damages sustained by the plaintiff, both in the past and in the future. A person who claims damages resulting from the wrongful act of another has a duty under the law to use reasonable diligence to mitigate – to avoid or minimize those

damages. If you find the defendant is liable and the plaintiff has suffered damages, the plaintiff may not recover for any item of damage which she could have avoided through reasonable effort. If you find from a preponderance of the evidence the plaintiff unreasonably failed to take advantage of an opportunity to lessen her damages, you should deny her recovery for those damages which she would have avoided had she taken advantage of the opportunity.

You are the sole judge of whether the plaintiff acted reasonably in avoiding or minimizing her damages. An injured plaintiff may not sit idly by when presented with an opportunity to reduce her damages. However, she is not required to exercise unreasonable efforts or incur unreasonable expenses in mitigating the damages. The defendant has the burden of proving the damages which the plaintiff could have mitigated. In deciding whether to reduce the plaintiff's damages because of her failure to mitigate, you must weigh all the evidence in light of the particular circumstances of the case, using sound discretion in deciding whether the defendant has satisfied its burden of proving the plaintiff's conduct was not reasonable.

If you find that the plaintiff is reasonably certain to suffer damages in the future from her injuries, then you should award her the amount you believe would fairly compensate her for such future damages. An award of the future damages necessarily requires that payment be made now for a loss that plaintiff will not actually suffer until some future date.

You must not make any adjustment to present value for any damages you may award for future mental anguish.

Question No. 2:

> What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Plaintiff for the compensatory damages, if any, caused by the discriminatory actions of Dillard's?

Answer in dollars and cents, if any, or "zero."

ANSWER: $24,000.

If you have found that Ms. Fentroy is entitled to any damages, go to Instruction No. 3. If you answer is "0", stop here.

You also may award punitive damages, if the plaintiff has proved that the defendant acted with malice or reckless indifference to her federally protected rights. If you determine that the defendant's conduct was so shocking and offensive as to justify an award of punitive damages, you may exercise your discretion and award those damages. In making any award of punitive damages, you should consider that the purpose of punitive damages is to punish a defendant for shocking conduct, and to deter the defendant and others from engaging in similar conduct in the future. The law does not require you to award punitive damages; however, if you decide to award punitive damages, you must use sound reason in setting the amount of the damages. The amount of an award of punitive damages must not reflect bias, prejudice, or sympathy toward any party. However, the amount can be as large as you

believe necessary to fulfill the purposes of punitive damages. You may consider the financial resources of the defendant in fixing the amount of punitive damages.

Question No. 3:

> Do you find from a preponderance of the evidence that the defendant, Dillard Texas Limited Operating Partnership, engaged in a discriminatory practice with malice or with reckless indifference to the federally protected rights of Ms. Fentroy?

Answer "We do" or "We do not."

ANSWER: We do

If you answer to Question No. 3 is "We do," go to Question No. 4.

Question No. 4:

> What amount of money, if any, do you find from a preponderance of the evidence should be assessed as punitive damages against the defendant Dillard Texas Operation Limited Partnership?

Answer in dollars and cents, if any.

ANSWER: $72,000

It is your sworn duty as jurors to discuss the case with one another in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after full consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to re-examine your own opinion and change your mind if you become convinced that you are wrong.

However, do not give up your honest beliefs solely because the others think differently, or merely to finish the case. Remember that in a very real way you are the judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

When you retire to the jury room to deliberate, you may take with you this charge and the exhibits that the court has admitted into evidence. Select your Foreperson and conduct your deliberations. If you recess during your deliberations, follow all of the instructions that I have given you concerning your conduct during the trial. After you have reached your unanimous verdict, your Foreperson must fill in your answers to the written questions and sign and date the verdict form. Unless I direct you otherwise, do not reveal your answers until such time as you are discharged. You must never disclose to anyone, not even to me, your numerical division on any question.

If you want to communicate with me at any time, please give a written message to the Marshal, who will bring it to me. I will then respond as promptly as possible either in writing or by meeting with you in the courtroom. I will always first show the attorneys your question and my response before I answer your question.

After you have reached a verdict, you are not required to talk with anyone about the cause unless I order you to do so.

You may now retire to the jury room to conduct your deliberations.

SIGNED on 18 day of October, 1999.

/s/ David Hittner
DAVID HITTNER
United States District Judge

VERDICT

We, the jury, have unanimously answered the foregoing Jury Questions as indicated above and return the same into the Court as our verdict in this case.

/s/ _____ 10/19/99
FOREPERSON DATE